

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1029 of 2018

Arising Out of PS. Case No.-8 Year-2003 Thana- DHAMDAHA District- Purnia

1. Md. Gholtu Mian @ Gholtu Mian Son of Late Mahfuj Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
2. Md. Moharam Mian Son of Late Mafuj Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
3. Md. Chichwa Mian Son of Md. Moharram Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
4. Md. Jahangir Mian Son of Md. Moharram Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
5. Md. Bauku Mian Son of late Karamat Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
6. Bibi Airun Khatoon wife of late Lalwa Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
7. Bibi Sartun Khatoon wife of Md. Bauku Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
8. Md. Tamraj Mian Son of Md. Gafur Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
9. Md. Jainul Mian Son of Md. Gafur Mian Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea
10. Md. Jalil Mian Son of Md. Gafur Mian All resident of Village - Majhua, Premraj, P.S. - Sarsi, District - Punea.

... .. Petitioners

Versus

1. The State of Bihar
2. MD. ILIYASH S/O ALIKUD MIYAN Resident of Village- Majhua, Premraj, P.S.- Sarsi, District- Punea

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Amit Kumar Anand, Advocate
For the Respondent/s : Mr. Chandrasen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 25-04-2024 Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The instant revision is filed against the order dated
30.05.2018 passed in Cr. Appeal No. 28 of 2016 by the learned



Additional Sessions Judge, Purnea against the order of conviction and sentence passed by the learned Judicial Magistrate 1st Class at Purnea convicting the appellants and sentencing them to suffer imprisonment for three years with fine and default clause for the offence punishable under Section 452, imprisonment for three years with fine and default clause for the offence punishable under Section 420, imprisonment for three years for the offence under Section 379 of the I.P.C. with fine and default clause and imprisonment for one year with fine and default clause for the offence punishable under Section 354 of the I.P.C. It was directed by the Trial Court that the substantive sentence of imprisonment shall run concurrently. However, imprisonment for non-payment of fine shall run separately.

3. The appellants preferred an appeal before the learned Sessions Judge against the aforesaid judgment and order of conviction and sentence passed by the Trial Court which was registered as Cr. Appeal No. 28/2016. The said appeal was dismissed for default vide order dated 30.05.2018.

4. The said order is under challenge in the instant revision.

5. I have perused the impugned order and I am in conformity with the learned Judge in the Appellate Court that the conduct of the appellants was not at all satisfactory in conducting the appeal.

6. However, provisions relating to filing and hearing of a criminal appeal is dealt with under the provisions contained in



Chapter XXIX of the Code of Criminal Procedure. The Chapter XXIX contains Sections 372 to 394. In any of the provisions contained in Chapter XXIX, the Appellate Court has not been given the power to dismiss an appeal for default. There is a provision in Section 394 of the Cr.P.C. regarding abatement of appeal on the death of the appellant but an Appellate Court cannot dismiss an appeal for default. He will have to dispose of an appeal on merit only.

7. If the appellant is not represented by his learned Advocate in the court below, the learned court of appeal is at liberty to dispose of the appeal on merit on the basis of the submission made on behalf of the respondents. He is also at liberty to engage an Advocate from the panel of the State Defence Counsel or District Legal Services Authority to represent the appellant. In other words, an appeal can only be disposed on merit and cannot be dismissed for default. Since there is no provision under the Code of Criminal Procedure, an appeal cannot be dismissed for default. Accordingly, the impugned order dated 30.05.2010 suffers from patent illegality and material irregularity.

8. In view of the above discussion, the instant criminal revision is allowed. The impugned order dated 30.05.2018 is quashed and set aside. The Criminal Appeal No. 28/2016 be restored to the file of learned Additional Sessions Judge 5th Court at Purnea.

9. The appellant is directed to appear before the learned Additional Sessions Judge within three weeks from the date of this



order.

10. The instant order be communicated immediately by e-mail to the learned Additional Sessions Judge 5th Court at Purnea. If the appellant fails to take proper step on the date of hearing of the appeal, the learned Judge in the Appellate Court is at liberty to engage an Advocate on behalf of the appellant from the panel of the District Legal Services Authority, Purnea or from the panel of the State Defence Counsel. The learned Appellate Court is directed to dispose of the appeal within three months from the date of communication of the order.

11. The Office is directed to send the Trial Court records to the court of learned Additional Sessions Judge 5th Court at Purnea.

(Bibek Chaudhuri, J)

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